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October 7, 2005

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**VIA HAND DELIVERY**

Charles L.A. Terreni, Esquire  
Chief Clerk/Administrator  
**South Carolina Public Service Commission**  
101 Executive Center Dr., Suite 100  
Columbia, SC 29210

Re: Application of Duke Energy Corporation for Authorization to Enter into  
Business Combination Transaction with Cinergy Corporation  
**Docket No. 2005-210-E**

Dear Mr. Terreni:

Of the two Stipulations filed with the Commission today in this docket, the Stipulation signed by the South Carolina Office of Regulatory Staff, South Carolina Energy Users Committee and Duke Energy Corporation states that Duke Energy will abide by its North Carolina Code of Conduct for its operations in South Carolina. The parties did not include the North Carolina Code of Conduct as an exhibit to the Stipulation. Although it is not included as an exhibit, the parties enclose a copy as we would like the Commission to have a copy for its records.

With best regards,

*Shannon Bowyer Hudson*

Shannon Bowyer Hudson, Esquire  
Office of Regulatory Staff

SBH/pkr

Enclosure

cc: Paul R. Newton, Esquire  
William F. Austin, Esquire  
Richard L. Whitt, Esquire  
Frank R. Ellerbe, Esquire  
Bonnie D. Shealy, Esquire  
Scott Elliott, Esquire

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## NORTH CAROLINA CODE OF CONDUCT

### DUKE POWER'S RELATIONSHIP WITH AFFILIATES ENGAGED IN PROVIDING ENERGY-RELATED SERVICES

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#### A. Definitions

For the purposes of this Code of Conduct, the terms listed below shall have the following definitions:

**Affiliate:** Any division of Duke Energy Corporation not regulated as an electric utility by the Commission under N.C.G.S. § 62-3(23)(a) or any other entity ten percent (10%) or more which is owned or controlled, directly or indirectly, by or on behalf of Duke Energy Corporation.

**Commission:** The North Carolina Utilities Commission.

**Customer:** Any retail electric customer of the Utility located within the Utility's North Carolina and South Carolina franchised electric service territory that is the ultimate consumer of electricity.

**Customer Information:** Non-public information or data specific to a Customer with respect to electricity consumption, load profile, billing history, or credit history that is or has been obtained or compiled by the Utility in connection with the supplying of Electric Services to that Customer.

**Electric Services:** Commission-regulated electric energy sales, generation, transmission, distribution or delivery, and other related services, including, but not limited to, administration of scheduling, metering, billing, standby service, backups, and changeovers of service to other suppliers.

**Fully Distributed Cost:** All direct and indirect costs, including cost of capital, incurred in providing the goods and services in question; provided, however, that such cost of capital shall, in no event or circumstance, exceed the overall rate of return last found fair by the Commission for the Utility to have a reasonable opportunity to earn in the context of its last general rate case proceeding.

**Utility:** Duke Energy Corporation, which is a public utility subject to the jurisdiction of the Commission as defined in G.S. 62-3(23)(a)(1) (doing business as Duke Power, a division of Duke Energy Corporation).

#### B. Applicability of Rules

This Code of Conduct applies to transactions between the Utility and its Affiliates and will become applicable on the date that this Code of Conduct is filed with the Commission.

C. Non-Discrimination and Information Standards

1. The Utility and each of its Affiliates shall maintain separate books and records, or their equivalent for auditing and other regulatory purposes, as appropriate.
2. Utility employees will not disclose any Customer Information to be used to provide any Electric Services or other services to any person, including any Affiliate or any employee of any such Affiliate, unless the Customer has consented to the disclosure of such customer Information by signing a Data Disclosure Authorization as set forth in Attachment 1.
  - a. Notwithstanding the prohibitions established by this Section C.2, the Utility may disclose Customer Information to an Affiliate or a third party without Customer consent as necessary for the Affiliate or non-affiliated third party to provide goods or services to the Utility.
  - b. The Utility shall take appropriate steps to store Customer Information in such a manner to limit access to those persons permitted to receive it and to require persons with access to such information to protect its confidentiality.
3. When any Utility employee recommends an Affiliate to a Customer to provide assistance or advice in connection with, or otherwise identifies, a need or potential need of a Utility Customer for an energy-related service, the employee will advise the Customer that such services may also be available from other non-affiliated suppliers of energy-related services on a competitive basis.
4. No Utility employee who is transferred to an Affiliate will be permitted to copy or otherwise compile any Customer Information for use by such Affiliate except pursuant to written permission from the Customer, as reflected by a signed Data Disclosure Authorization. The Utility shall not transfer any employee to an Affiliate for the purpose of disclosing or providing Customer Information to such Affiliate.
5. Utility employees will not discriminate against non-affiliated entities. The Utility will not represent that any Affiliate will receive any preference from the Utility with respect to providing Electric Services over any unaffiliated service provider, nor will the Utility provide its Affiliate with any preference over non-affiliates in the provision of Electric Service. Duke Energy Corporation and its Affiliates will not represent or give the appearance to another party that any advantage with regard to Electric Services exists as the result of that party dealing with an Affiliate as compared with a non-affiliate.
6. If the Utility provides Electric Services pursuant to a filed tariff, it shall apply the provisions of that tariff equally to Affiliate and non-affiliate entities. The Utility

shall process all similar requests for Electric Services in the same timely manner whether requested on behalf of an Affiliate or non-affiliate entity.

7. The Utility shall not condition or otherwise tie the provision or terms of any Electric Services to the taking of any goods or services from an Affiliate.

D. Cost Allocation Standards

1. All costs incurred by Utility personnel for or on behalf of its Affiliates shall be charged to the Affiliates.
2. With regard to the transfer prices charged for goods and services, including the use and/or transfer of personnel, exchanged between and among the Utility and its Affiliates, the following conditions shall apply:
  - a. For goods and services provided by the Utility to such Affiliates, the transfer prices shall be set at the greater of a competitive price (i.e., a price comparable with prices generally being charged at the time in arms length transactions in the same market) or the Utility's Fully Distributed Cost.
  - b. For goods and services provided, directly or indirectly, by such Affiliates to the Utility, the transfer prices shall be set at the lesser of a competitive price or the Affiliate's Fully Distributed Cost. If the Utility does not engage in competitive solicitation and instead obtains the goods or services from an Affiliate, the Utility shall implement adequate processes to comply with this provision.

Existing affiliated contracts that have been filed with the Commission are not invalidated by this provision, but remain subject prospectively to the Commission's authority to review and evaluate the reasonableness of the contracts between the utility and its affiliates.

3. The Utility and its Affiliates may use joint corporate oversight, governance, support systems, and personnel (such as corporate governance committees or offices, payroll, taxes, information systems, legal, insurance, financial reporting or shareholder service), but such shared support shall be allocated on a fully distributed cost basis between the Affiliates and the Utility.
4. The Utility and its Affiliates may capture economies-of-scale in joint purchases of goods and services (excluding the purchase of natural gas and electric supplies intended for resale). The Utility must ensure that all joint purchases are priced in a manner that permits clear identification of Utility and Affiliate portions of such purchases.

5. All permitted transactions between and among the Utility and its Affiliates shall be recorded and accounted for in accordance with the Utility's cost allocation manual filed with the Commission, as updated.
6. If the Utility incurs costs in assembling, compiling, preparing, and/or finishing any requested Customer Information to an Affiliate or a non-affiliate, it shall charge the Customer, the Affiliate, or the non-affiliate a competitive charge (not less than the Utilities Fully Distributed Cost) for such Customer Information on a nondiscriminatory basis.
7. Prior to adoption of a retail access plan in the State of North Carolina which allows the Utility's retail customers to seek new generation suppliers, the Utility will file by April 30 of each year annually a written report with the Commission detailing the loss of any retail electric loads during the previous calendar year (including aggregated load) of 5.0 megawatts or greater, including the name of the load's new supplier, if applicable, explanations as to why the load was lost and what, if any, alternative energy form replaced it. To the extent that the loss of any native retail electric load is determined to be the result of any Utility Affiliate's direct or indirect marketing or promotion of electric or alternative energies, the Utility will not seek to be compensated for any revenue requirement impact resulting therefrom.
8. Any technology or trade secrets developed by the Utility in the conduct of regulated operations will not be transferred to any of the Utilities Affiliates without just compensation and 60 days prior notification to the Commission: provided however, the Utility may request a waiver of this requirement from the Commission if the circumstances warrant it.

E. Regulatory Oversight Standards

1. The state's existing requirements under N.C.G.S. § 62-153 for reporting of Affiliate transactions shall apply.
2. The books and records of Duke Energy Corporation and its Affiliates shall be open for examination by the Commission, its staff, and the Public Staff consistent with the provisions of N.C.G.S. §§ 62-34, 62-37, and 62-51.

F. Utility Billing Format

1. To the extent any bill issued by the Utility, an Affiliate or a non-affiliated third party includes any charges to Customers for Electric Services and services from an Affiliate or third party, the charge for the Electric Services shall be separated from the charges for such other services included on the bill. Each such bill shall contain language stating that the Customer's Electric Services will not be terminated for failure to pay for such other services billed.

G. Complaint Procedure

1. The Utility shall establish complaint procedures to resolve potential complaints that arise due to the relationship of the Utility with its Affiliates. The complaint procedures shall provide for the following:
  - a. Verbal and written complaints shall be referred to a designated representative of the Utility.
  - b. The designated representative shall provide written notification to the complainant within 15 days that the complaint has been received.
  - c. The Utility shall investigate the complaint and communicate the results or status of the investigation to the complainant within 60 days of receiving the complaint.
  - d. The Utility shall maintain a log of complaints and related records and permit inspection of documents (other than those protected by the attorney/client privilege) by the Commission, its staff or the Public Staff.
2. Notwithstanding the provisions of Section G.I., any complaints received through Duke Energy Corporation's EthicsLine, which is a confidential mechanism available to Duke Energy Corporation employees, shall be handled in accordance with procedures established for EthicsLine.
3. These complaint procedures do not affect a complainant's right to file a formal complaint or otherwise address questions to the Commission.

H. Revisions to this Code of Conduct

1. This Code of Conduct provides minimum standards and is subject to such modification by the Commission as the public interest may require.

Attachment I

DUKE POWER DATA DISCLOSURE AUTHORIZATION

The undersigned customer (the "Customer") of Duke Power hereby requests that Duke Power provide to \_\_\_\_\_ (name of requesting party) the confidential data described below, and consents to the disclosure of such data.

The Customer acknowledges that Duke Power has advised it that, so long as the Customer gives permission by signing a Data Disclosure Authorization, such data will be furnished on a non-discriminatory basis to any person or entity as the Customer directs, whether or not the person or entity is an Affiliate of Duke Power. If the data is being furnished to an Affiliate of Duke Power for the purpose of providing energy-related services, the Customer also acknowledges that Duke Power has advised it that such energy-related services may be available from other non-affiliated suppliers of energy-related services, at the Customer's request.

The Customer recognizes that Duke Power may incur certain costs in assembling, compiling, and/or furnishing the described confidential data and that if so, Duke Power will bill the requesting party to recover any such costs incurred. The Customer also recognizes that Duke Power is under no obligation to release such information to any requesting party until that person, whether an Affiliate or non-affiliate, reimburses Duke Power for its costs.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Customer:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_